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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

In re A.S. et al., Minors.

T.S. et al.,

Petitioners and Respondents,

v.

C.S.,

Objector and Appellant.

F057598

(Super. Ct. No. S-1501-AT-2741)

**OPINION**

APPEAL from an order of the Superior Court of Kern County. Judith K. Dulcich,  
Judge.

Caroline J. Todd, under appointment by the Court of Appeal, for Objector and  
Appellant.

No appearance for Petitioners and Respondents.

No appearance for Minors.

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T.S. and K.S. (hereafter grandparents) filed a petition to terminate the parental rights of their daughter, C.S., to her two children, A.S. and M.S., pursuant to the provisions of Family Code section 7820 et seq.<sup>1</sup> C.S. did not receive actual notice of the hearing on the petition until after it had occurred. She argues that her right to due process was violated because she was denied the opportunity to be present and be heard in opposition to the petition. We agree that under the facts of this case her right to due process was violated and reverse the order terminating her parental rights.

### **FACTUAL AND PROCEDURAL SUMMARY**

The petition, filed on February 10, 2009, by grandparents, alleged that they were the legal guardians for the children and that C.S. had failed to communicate with, and provide support for, the two girls for a period in excess of six months.

On the same day, an order issuing a citation was filed. Grandparents were ordered to serve C.S. with the citation. The citation ordered C.S. to appear at a hearing on April 10, 2009, and to show cause why her children should not be declared free from her custody and control. The citation also provided C.S. with the statutorily required notices of the right to appointed counsel, the right of the children to appointed counsel, and the right to a continuance. (§§ 7860-7864.)

Also on that date an application for an order permitting service by publication was filed. Grandparents sought to serve C.S. by publishing the required notice in the Bakersfield News Observer, which allegedly was the newspaper most likely to give notice to C.S. of the proceedings. An order granting the application was signed on the same date.

The “declaration of search” accompanying the application stated that grandparents had attempted to locate C.S. by checking the current personal property assessment roll and current telephone directory, and by searching the white pages of an Internet

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<sup>1</sup>All further statutory references are to the Family Code unless otherwise noted.

telephone directory. In addition, C.S.'s ex-boyfriend had been contacted. He did not know C.S.'s current address. Grandparents also stated they did not know C.S.'s current address, the house at her last known address was vacant, and C.S. had not provided her address to "anyone that we are aware of." Finally, grandparents stated they knew that the Kern County District Attorney's Office had been unsuccessful in its attempts to contact C.S. during the course of a welfare fraud investigation.

On March 24, 2009, grandparents filed a proof of publication indicating that the citation had been published in the Bakersfield News Observer once each week for four consecutive weeks beginning February 25, 2009.

Family court services (FCS) filed an investigative report on April 8, 2009. This report provided information about the children, as well as information from the investigator's interview with the two children. The children stated they did not want to have a relationship with C.S. The report also stated that C.S.'s current whereabouts were unknown, but that a search of DMV records provided two possible addresses for her in Bakersfield. The first address was that of grandparents. The FCS investigator sent a registered letter to that address on March 11, 2009. The report stated a registered letter was sent to the other Bakersfield address on April 2, 2009. There is no indication in the record that any other attempt was made to contact C.S. at this second address. The report concluded by recommending that the petition be granted.

The matter came on for hearing on April 10, 2009, and the petition was granted. C.S. did not appear at the hearing. C.S. filed a notice of appeal on April 15, 2009.

### **DISCUSSION**

The Family Code permits the termination of parental rights under limited circumstances. (§ 7820 et seq.) In ruling on a petition to terminate parental rights, the family court must address competing concerns, each of which is addressed in the statutory scheme.

“Statutes authorizing an action to free a child from parental custody and control are intended foremost to protect the child. [Citation.] Typically, such statutes are invoked for the purpose for terminating the rights of one or more biological parent, so the child may be adopted into a stable home environment. [Citations.] In any event, the best interests of the child are paramount in interpreting and implementing the statutory scheme. [Citation.] Indeed, our Legislature has declared that the statutory scheme ‘shall be liberally construed to serve and protect the interests and welfare of the child.’ [Citation.] It further directs that the trial court ‘*shall* consider the wishes of the child, bearing in mind the age of the child, and *shall* act in the best interest of the child.’ [Citation.] [¶] We recognize, as well, that ‘[t]he relationship of a natural parent to [his] child[] is a vital human relationship,’ with far-reaching implications for the child’s growth and development. [Citation.] We therefore view the involuntary termination of parental rights as a ‘drastic remedy which should be resorted to only in extreme cases of neglect or abandonment.’ [Citation.] In light of these weighty concerns, proof of abandonment must be established by clear and convincing evidence. [Citation.]” (*Neumann v. Melgar* (2004) 121 Cal.App.4th 152, 162-163.)

As stated above, the Family Code requires that proof of abandonment must be established by clear and convincing evidence. (§ 7821.) This requirement reflects the constitutional foundation of a parent’s right to raise his or her child. (*Stanley v. Illinois* (1972) 405 U.S. 645, 651; *Lois R. v. Superior Court* (1971) 19 Cal.App.3d 895, 901.) The parent’s interest in raising his or her child therefore is protected by the due process clause. “Since the interest of a parent in the companionship, care, custody, and management of his children is a compelling one, ranked among the most basic of civil rights [citations], the state, before depriving a parent of this interest, must afford him adequate notice and an opportunity to be heard. [Citations.]” (*In re B.G.* (1974) 11 Cal.3d 679, 688-689.)

The Family Code complies with the notice requirement by requiring service of the citation on the father or mother of the child if the place of residence is known to the petitioner. (§ 7881, subd. (a).) “The citation shall be served in the manner provided by law for the service of a summons in a civil action, other than by publication.” (*Id.*, subd. (c).) Service must be completed at least 10 days before the hearing. (*Id.*, subd. (d).)

If the parent cannot, with reasonable diligence, be served personally, or if the parent's place of residence is not known to the petitioner, then service may be accomplished by publication. (§ 7882, subd. (b).) The petitioner must file an affidavit with the court, which must issue an order allowing service of the citation by publication. (*Id.*, subd. (a).) A prerequisite to service by publication, however, is a showing in the affidavit that the affiant used due diligence to locate and serve the parent before applying to serve the parent by publication. (*In re Beebe* (1974) 40 Cal.App.3d 643, 646.) The citation must be published in the newspaper that is "most likely to give notice to the father or mother." (§ 7882, subd. (b).) Moreover, if the "residence of the father or mother is not known to the petitioner, then the citation shall be served on the grandparents and adult brothers, sisters, uncles, aunts, and first cousins of the child, if there are any and if their residences and relationships to the child are known to the petitioner." (§ 7881, subd. (a).)

Grandparents failed to comply with the statutory requirements. First, they failed to establish in their affidavit that they used due diligence in attempting to locate C.S. The petition and affidavit established that grandparents are C.S.'s parents, and that C.S. lived on the same property as grandparents from 2003 through June 2008. Apparently, between June 2008 and February 4, 2009, grandparents had no contact with C.S. Despite the long history of living together, the only attempts to locate C.S. were through the personal property assessment roll, a review of telephone directories, both paper and electronic, and contacting C.S.'s ex-boyfriend. The affidavit does not suggest that grandparents attempted to locate C.S. through her brothers and sisters (grandparents' children) or through any of C.S.'s friends. Nor does the affidavit indicate that grandparents attempted to contact C.S. through her cell phone number. Finally, there was no attempt to locate C.S. by checking to see if the post office had a forwarding address for her.

We also find disingenuous the statement in the affidavit that C.S. did “not provide[] her address to anyone that we are aware of since leaving” grandparents’ residence. (Capitalization omitted.) This statement did nothing more than inform the family court that grandparents’ meager attempts to contact C.S. were fruitless. It did not mean that no one knew where C.S. was living. It simply meant that grandparents did not locate her.

Second, it does not appear that the Bakersfield News Observer was the newspaper most likely to give C.S. notice of the action. The Library of Congress Web site indicates that the Bakersfield News Observer is published weekly and is primarily aimed at an African-American audience. (<<http://chroniclingamerica.loc.gov/lccn/sn95061956>> [as of Oct. 26, 2009].) On the other hand, The Bakersfield Californian is published daily, primarily covers Bakersfield in general, and is available online. (<<http://chroniclingamerica.loc.gov/lccn/sn81004331>> [as of Oct. 26, 2009].) Since C.S. is not African-American, and The Bakersfield Californian is available online, it appears that the newspaper most likely to give C.S. notice of the proceedings was The Bakersfield Californian, and not the Bakersfield News Observer.

Third, there is no proof of service in the file indicating that all appropriate parties were served. Section 7881, subdivision (a) requires that the adult grandparents, uncles, aunts, and first cousins of the children be served. The file does not contain a proof of service indicating any of these individuals were served.

Finally, we find troubling FCS’s actions in this matter. FCS located two addresses for C.S. On March 11, 2009, a letter was sent to the first address—grandparents’ address. While it was proper to do so, in case a forwarding order was placed with the post office, the report stated that no notice was sent to the second address until April 2, 2009. There is no explanation for this delay. Despite the knowledge of a second possible address for C.S., there was no attempt to serve her personally with the citation by either FCS or

grandparents. Nor is there any indication in the report of whether grandparents have children other than C.S. (who is the biological child of K.S. and her first husband).

The lack of statutory compliance is confirmed by the record in the writ proceeding also pending before this court (*C.S. v. Superior Court*, No. F058078). C.S.'s declaration stated that the children have two adult aunts and one adult uncle. C.S. also explained that the letter from FCS was postmarked on April 8, 2009, not April 2, 2009, as stated in the FCS report. This fact is confirmed by the postmark on the envelope containing the letter that was attached as an exhibit to C.S.'s declaration. C.S. was notified by the postal service on April 10, 2009, the date of the hearing, that she there was a certified letter for her. She retrieved the letter from the post office on April 11, 2009, the day after the hearing terminating her parental rights. Accordingly, despite FCS's knowledge of C.S.'s actual address, she did not receive notice of the hearing to terminate her parental rights until after the hearing.

We also note that FCS did not include the citation issued by the family court in the mailing. It simply sent C.S. a letter notifying her of the date of the hearing. C.S. was asked to contact FCS, but was not advised of her rights as stated in the citation.

C.S. further explained that she had had the same cell phone number since she moved from her parents' property. Moreover, she stated she had lived at the same address with the same phone number since October, 2008. C.S. also asserted that her friends knew where she lived and that grandparents knew of these friends. C.S. also confirmed that she is not African-American, so she would not have learned of a notice published in the Bakersfield News Observer.<sup>2</sup>

In their response to C.S.'s petition for a writ of habeas corpus, grandparents deny many of C.S.'s assertions. They cannot, however, deny that C.S. did not receive actual

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<sup>2</sup>C.S. claims that when she lived at home she regularly read The Bakersfield Californian, and her parents were aware of that fact.

notice of the hearing until after the hearing took place, despite her address being known, at least by FCS.

Under the facts of this case, we conclude that C.S.'s right to due process was violated. Once again, we emphasize that a parent's interest in raising his or her children is a fundamental right that receives constitutional protection. Termination of that right requires that the parent receive a notice of the hearing and an opportunity to be heard. The meager efforts by grandparents, as well as FCS, simply do not meet constitutional requirements.

### **DISPOSITION**

The order terminating C.S.'s parental rights is reversed and the matter is remanded to the superior court for a hearing on the petition consistent with the statutory requirements after the citation is properly served on C.S. C.S. shall not be prejudiced by the filing of this appeal. C.S. shall recover her costs on appeal.

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CORNELL, Acting P.J.

WE CONCUR:

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GOMES, J.

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DAWSON, J.